



IT IS ORDERED as set forth below:

Date: January 06, 2011

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CHAPTER 7
	:	
GRANT L. RAINEY,	:	CASE NO. 10-72768-PWB
	:	
Debtor	:	
	:	
	:	
	:	
	:	
GRANT L. RAINEY,	:	
	:	
	:	
	:	CONTESTED MATTER
Movant,	:	
	:	
vs.	:	
	:	
SALLY ANN LESTER,	:	
	:	
	:	
Respondent.	:	

ORDER REGARDING AVOIDANCE OF JUDICIAL LIEN

The Debtor has moved to avoid, pursuant to 11 U.S.C. § 522(f), a judicial lien in the amount of approximately \$84,000 that Sally Ann Lester (“Respondent”) holds. [Docket No. 14].

The Debtor on Schedule C [Docket No. 9, Page 5] claims the following personal property as exempt: cash on hand and bank account at Wachovia, \$200; household goods and furnishings, \$3,000; books, \$200; clothing, \$1,000; Mercury Mountaineer, \$2,000. The Debtor is entitled to exempt all of this property. The total value of the household goods and furnishings, books, and clothing is \$4,200, which is within the maximum amount allowed for the exemption of such property under O.C.G.A. § 44-13-100(a)(4); the value of the Mercury Mountaineer is within the maximum allowed for the exemption of motor vehicles in O.C.G.A. § 44-13-100(a)(3); and the cash on hand and bank accounts with a value of \$200 are exemptible under O.C.G.A. § 44-13-100(a)(6). Respondent has not objected to the Debtor's exemption of the personal property described above or to the avoidance of the judicial lien on this personal property. Accordingly, the Debtor is entitled to avoid the judicial lien on his personal property listed in Schedule C pursuant to 11 U.S.C. § 522(f)(1)(A).

The Debtor also claims that he is entitled to exempt his interest in residential real property known generally as 4125 Will Lee Road, Atlanta, Georgia 30349 (the "Residence").¹ It is undisputed that the value of the entire fee simple interest in the Residence is \$79,000 and that it is otherwise unencumbered. He is entitled to exempt \$10,000 of his interest in the Residence. O.C.G.A. § 44-13-100(a)(1).

¹ The Debtor did not claim an exemption in his interest in the Residence on Schedule C. See Schedule C, Docket No. 9, Page 5. Nevertheless, it is clear that the Debtor has the right to exempt \$10,000 of value in the Residence under O.C.G.A. § 44-13-100(a)(1), and the parties have litigated the issue of the extent to which Respondent's judicial lien is avoidable on the assumption that the Debtor has an exemption under O.C.G.A. § 44-13-100(a)(1). See Debtor's letter brief [Docket No. 22] and Respondent's supplementary response [Docket No. 23]. Because the parties have assumed that the Debtor claimed his interest in the Residence as exempt and because the Debtor could amend his Schedule C to claim an exemption in the Residence, FED. R. BANKR. P. 1009(a), the Court will deem the Debtor to have amended Schedule C to claim his interest in the Residence as exempt to the fullest amount allowed under O.C.G.A. § 44-13-100(a)(1). Because the Debtor is not married, the amount of the exemption is \$10,000, not \$20,000 as he claimed in his Motion to Avoid Lien. [Docket No. 14, ¶5].

The Debtor asserts that he has only an undivided one-half interest in the Residence.² If so, the judicial lien would be avoidable to the extent that it exceeds \$29,500, the difference between the value of a one-half interest in the Residence (\$39,500) and the allowable exemption (\$10,000).

Respondent contends, however, that the Debtor owns more than half of the Residence. In this regard, Respondent has submitted evidence that, under a 1976 deed, the Debtor and his wife, Elsie Ruth Rainey, owned the Residence, that Mrs. Rainey owned a one-half interest in it when she died on August 24, 2004, and that real estate records do not show any disposition of Mrs. Rainey's interest in the Residence before or after her death. [Docket No. 23, Attachment, "Affidavit of Finn Duerr", Paragraphs 2 and 4]. As set forth in this Court's order entered on November 23, 2010 (the "November 23 Order") [Docket No. 24], the Debtor may have acquired by inheritance some or all of Mrs. Rainey's one-half interest. If the Debtor inherited all of her interest, then he owns the entire fee simple interest in the Residence, and he could avoid the lien only to the extent it exceeds \$69,000.

In the Court's November 23 Order, the Court directed the Debtor to supplement his motion and provide further information with regard to the Debtor's interest in the Residence. The Debtor has failed to do so. Consequently, the Court cannot determine whether the Debtor's interest in the Residence is limited to an undivided one-half interest as he contends. Further, if the Debtor owns more than the half he acquired under the 1976 deed, any such interest is not exempt and the lien does not impair it.

In these circumstances, it is not appropriate to avoid Ms. Lester's judicial lien with regard to the Debtor's interests in any property other than the personal property listed on

² See Amendment to Schedule A. [Docket No. 19].

Schedule C and his undivided one-half interest in the Residence.³ The Court will avoid the lien only as follows.

First, because Respondent's lien impairs the Debtor's exemption in the personal property described on Schedule C in its entirety, the lien is avoidable under 11 U.S.C. § 522(f)(1)(A) *in toto* with regard to the items of personal property listed on Schedule C.

Second, Respondent's lien impairs the Debtor's exemption in his undivided half-interest in the Residence to the extent that the amount of the lien exceeds \$29,500, which is the value of that half-interest (\$39,500) less his exemption (\$10,000). The lien is, therefore, avoidable under §522(f)(1)(A) to that extent. Stated conversely, the judicial lien is not avoidable to the extent of \$29,500 with regard to the Debtor's undivided one-half interest in the Residence.

Third, because the Debtor has failed to provide information from which the Court can determine the extent of any interest the Debtor has in the Residence in addition to an undivided one-half interest, the Court declines to avoid or limit the Respondent's lien with regard to any additional interest of the Debtor in the Residence or any property of the Debtor that he has not claimed as exempt.

Based on the foregoing, it is hereby ORDERED as follows:

1. The judicial lien of Sally Ann Lester with regard to the personal property that the Debtor listed on Schedule C [Docket No. 9] is avoided, pursuant to 11 U.S.C. § 522(f)(1)(A), in its entirety.

2. The judicial lien of Sally Ann Lester with regard to the Debtor's undivided one-half interest of the Debtor in the Residence is avoided pursuant to 11 U.S.C. § 522(f)(1)(A) to the

³ If the extent of the Debtor's ownership were clear, he had candidly presented the facts, and he owned the entire interest, the Court would avoid the lien on the Residence to the extent it exceeded \$69,000.

extent that the amount of the lien exceeds \$29,000. In other words, the judicial lien is not avoided with regard to the Debtor's undivided one-half interest in the Residence to the extent of \$29,000.

3. The judicial lien of Sally Ann Lester is not avoided under 11 U.S.C. § 522(f)(1)(A) to the extent that the Debtor has more than an undivided one-half interest in the Residence and with regard to any property to which it attaches that the Debtor has not exempted.

The Court notes that, if this case is dismissed, the judicial lien will be reinstated in full pursuant to 11 U.S.C. § 349(b)(1)(B).

END OF ORDER

DISTRIBUTION LIST

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